

## LEGISLATIVE BILL 49

Approved by the Governor February 6, 2001

Introduced by Landis, 46

AN ACT relating to the Uniform Commercial Code; to amend sections 9-342, 9-519, 9-611, and 9-706, Uniform Commercial Code; to change provisions relating to secured transactions; to provide an operative date; to repeal the original sections; and to declare an emergency.  
Be it enacted by the people of the State of Nebraska,

Section 1. Section 9-342, Uniform Commercial Code, is amended to read:

9-342. Bank's right to refuse to enter into or disclose existence of control agreement.

This article does not require a bank to enter into an agreement of the ~~type~~ kind described in section 9-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

Sec. 2. Section 9-519, Uniform Commercial Code, is amended to read: 9-519. Numbering, maintaining, and indexing records; communicating information provided in records.

(a) For each record filed in a filing office, including each record filed in a filing office pursuant to Chapter 52, article 2, 5, 7, 9, 10, 11, 12, or 14, Chapter 54, article 2, or the Uniform State Tax Lien Registration and Enforcement Act, the filing office shall:

- (1) assign a unique number to the filed record;
- (2) create a record that bears the number assigned to the filed record and the date and time of filing;
- (3) maintain the filed record for public inspection; and
- (4) index the filed record in accordance with subsections (c), (d), and (e).

(b) A file number must include a digit that:

- (1) is mathematically derived from or related to the other digits of the file number; and
- (2) ~~enables the filing office to detect~~ aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) Except as otherwise provided in subsections (d) and (e), the filing office shall:

- (1) index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

- (1) under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) to the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under section 9-514(a) or an amendment filed under section 9-514(b):

- (1) under the name of the assignor as grantor; and
- (2) to the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) The filing office shall maintain a capability:

- (1) to retrieve a record by the name of the debtor and by the file

number assigned to the initial financing statement to which the record relates; and

(2) to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under section 9-515 with respect to all secured parties of record.

(h) The filing office shall perform the acts required by subsections (a) through (e) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

(i) Subsections (b) and (h) do not apply to a filing office described in section 9-501(a)(1).

Sec. 3. Section 9-611, Uniform Commercial Code, is amended to read: 9-611. Notification before disposition of collateral.

(a) In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in subsection (d), a secured party that disposes of collateral under section 9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

(1) the debtor;

(2) any secondary obligor, unless no security for the obligation or indebtedness was taken or contemplated at the time the secondary obligor became accountable in whole or in part for payment or other performance of the obligation; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 9-311(a).

(d) Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed by subdivision (c)(3)(B) if:

(1) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subdivision (c)(3)(B); and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

Sec. 4. Section 9-706, Uniform Commercial Code, is amended to read: 9-706. When initial financing statement suffices to continue effectiveness of financing statement.

(a) The filing of an initial financing statement in the office specified in section 9-501 continues the effectiveness of a financing statement filed before July 1, 2001, if:

(1) the filing of a an initial financing statement in that office would be effective to perfect a security interest under this article;

(2) the pre-operative-date financing statement was filed in an office in another state or another office in this state; and

(3) the initial financing statement satisfies subsection (c).

(b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-operative-date financing statement:

(1) if the initial financing statement is filed before July 1, 2001, for the period provided in section 9-403, as such section existed immediately before July 1, 2001, with respect to a financing statement; and

(2) if the initial financing statement is filed on or after July 1, 2001, for the period provided in section 9-515 with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a), an initial financing statement must:

(1) satisfy the requirements of part 5 for an initial financing statement;

(2) identify the pre-operative-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the pre-operative-date financing statement remains effective.

Sec. 5. This act becomes operative on July 1, 2001.

Sec. 6. Original sections 9-342, 9-519, 9-611, and 9-706, Uniform Commercial Code, are repealed.

Sec. 7. Since an emergency exists, this act takes effect when passed and approved according to law.